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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Billed Party Preference for)
InterLATA 0+ Calls)

CC Docket No. 92-77

**COMMENTS OF THE INMATE CALLING SERVICE PROVIDERS
COALITION ON THE PETITION FOR RECONSIDERATION OF
CITIZENS UNITED FOR REHABILITATION OF ERRANTS**

The Inmate Calling Service Providers Coalition ("ICSPC") hereby submits its comments on the petition for reconsideration of the Commission's *Second Report and Order and Order on Reconsideration*, FCC 98-9 (released January 29, 1998) (the "Order") filed on April 9, 1998 by Citizens United for Rehabilitation of Errants ("C.U.R.E.") in the above captioned proceeding (the "*Petition*").

Statement of Interest

ICSPC is an ad hoc coalition of companies that provide highly specialized telephone equipment and services to inmates in confinement facilities. ICSPC's members range in size from the nation's largest independent provider of inmate calling service ("ICS") to small companies serving only a handful of confinement facilities. They share in common the desire to offer the highest possible level of service to confinement facilities and inmate callers at rates that are fair, while providing a reasonable return on investment.

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Introduction

C.U.R.E.'s *Petition* asks that the Commission reconsider or clarify two aspects of its *Order*. First, C.U.R.E. seeks what it terms a clarification of the terms of the oral disclosure required by ICS providers for interstate inmate calls. While ICSPC believes that the *Order* and the rules adopted therein regarding the oral disclosure requirement are completely clear and that no clarification is necessary, ICSPC does not object to most of the "clarifications" requested by C.U.R.E. However, ICSPC does object to C.U.R.E.'s suggestion that the Commission involve itself in regulating the length of inmate calls. As detailed below, the "clarification" that C.U.R.E. seeks in this regard is both beyond the scope of this proceeding and outside the Commission's statutory authority.

Second, C.U.R.E. seeks a reconsideration of the *Order* that would require ICS providers to (1) make copies of their informational tariffs available on the premises of the confinement facilities that they serve and (2) provide copies to interested parties upon request. C.U.R.E. is mistaken that ICS providers are required to file Section 226 informational tariffs. To the extent that the Section 203 tariff requirement applies, ICSPC objects to C.U.R.E.'s proposal. As detailed below, ICSPC believes that the proposal is beyond the Commission's authority and would impose an unnecessary regulatory burden on ICS providers who would be required to implement costly compliance programs.

Discussion

I. The Commission Should Reject C.U.R.E.'s Suggestion that it Regulate the Length of Inmate Calls

In its *Petition*, C.U.R.E. requests that the Commission “clarify that all information relating to oral disclosures may not detract from the total connection time available to inmates.” *Petition* at 7. As C.U.R.E. correctly states, calls placed from confinement facilities are often limited in duration to ten or fifteen minutes for a number of reasons including security and ensuring fair apportionment of telephone privileges among inmates. What C.U.R.E. does not make clear is that these limits are not set by ICS providers. Rather, they are set by the confinement facilities themselves and are typically included as a provision in the contract between the facility and its ICS provider. Because it is the confinement facility and not the service provider that sets the rules governing inmate telephone privileges, the ICS provider would not be able to ensure compliance with the rule proposed by C.U.R.E. As for the confinement facilities, the Commission has no authority over them, nor does it have the expertise to regulate the privileges accorded to inmates by such facilities. Moreover, even if the Commission did have jurisdiction over confinement facilities, at no point in this proceeding did the Commission announce that it intended to regulate them. To do so now would be far beyond the scope of this proceeding.

With respect to the other “clarifications” sought by C.U.R.E., the ICSPC has no objections. The *Petition* points out that the language of Section 64.710 of the Commission’s rules, which contains the oral disclosure requirement for interstate calls from inmates, varies slightly from the language of Section 64.703(a)(4) of the rules, which

contains the oral disclosure requirement applicable to 0+ interstate calls. Specifically, C.U.R.E. observes that whereas Section 64.703(a)(4) requires that information must be provided regarding the “total cost of the call, including any aggregator surcharge,” Section 64.710 requires that information must be provided regarding the cost of the “first minute of the call and for additional minutes.” ICSPC believes that this is a distinction without a difference and that under either rule section the information required to be provided is essentially the same.

The *Petition* also points to a second difference in the two rule sections. C.U.R.E. points out that Section 64.703(a)(4) specifically states that the oral disclosure be made “at no charge.” According to C.U.R.E., there is no similar language in Section 64.710. However, subsection (a)(2) states explicitly that ICS providers must “[p]ermit the consumer [i.e. the party to be billed], to terminate the telephone call *at no charge* before the call is connected.” Once again, while ICSPC believes that the language of Section 64.710 is fully adequate, to the extent that C.U.R.E. believes that a clarification is necessary, ICSPC has no objection.

II. C.U.R.E.’s Proposal Regarding Informational Tariffs Is Beyond the Scope of the Commission’s Authority and Would Impose an Unnecessary Regulatory Burden

C.U.R.E. would have the Commission require ICS providers to “make copies of their [Section 226] informational tariffs available on the premises of the facilities [they are contracted to serve], as well as provide copies to interested parties upon request.” *Petition* at 9. C.U.R.E. is mistaken that ICS providers are required to file Section 226

informational tariffs. The informational tariff filing requirement of Section 226 applies to providers of “operator services,” 47 U.S.C. § 226(h)(1)(A), which is defined as to include certain interstate telecommunications service “initiated from an aggregator location,” 47 U.S.C. § 226(a)(7). The Commission has concluded that the definition of aggregator “does not apply to correctional institutions in situations in which they provide inmate -only phones.” *See Billed Party Preference for InterLATA 0+ Calls, Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 7274, 7300 n.122. There is thus no requirement that ICS providers file Section 226 tariffs.

To the extent that Section 203 applies, C.U.R.E.’s proposal is inappropriate. The proposal—which singles out ICS providers for a unique burden borne by no other class of service provider—would impose significant costs on ICS providers, who would be required to implement compliance programs to ensure that whenever they issued a new or revised tariff that copies of the tariff be sent to all of the facilities with whom they contract to provide services. In the case of the larger ICS providers, this would require sending out dozens of copies of their tariffs and the cost of compliance would be significant. If, in addition, ICS providers are also required to provide copies of their tariffs to any interested party on demand, the cost would be even greater.

The expenditure of effort and expense required by C.U.R.E.’s proposal would be without any corresponding benefit. As C.U.R.E. acknowledges, the cost of calls placed by inmates is borne by the called party. Thus, while C.U.R.E. argues to the contrary, it is the recipients of inmate calls who have an interest in the ready access to ICS provider rates. Called parties already have access to ICS provider tariffs on file with the Commission. In

addition, the new oral disclosure requirement is designed to provide called parties with exactly the information that they need in order to make informed choices regarding whether to accept a call from an inmate. Given that the called parties who truly need the information already have access to it, it would be unnecessary to impose additional costs in an attempt to provide inmates with access to that same information.

In addition to imposing an unnecessary burden on ICS providers, at least one element of C.U.R.E.'s proposal is beyond the Commission's authority. According to C.U.R.E., the Commission should require ICS providers to make copies of their informational tariffs "available on the premises" of the facilities they serve. Nothing in the Communications Act of 1934, as amended, however, provides the Commission with jurisdiction over confinement facilities. Thus, while perhaps the Commission could require ICS providers to provide a copy of their tariff to the confinement facilities they serve, the Commission would have no authority to require the confinement facility to then make the tariff available on its premises. The end result is that any requirement along the lines proposed by C.U.R.E. would be rendered meaningless.

The Commission in recent years has emphasized its desire to remove regulatory burdens wherever possible. C.U.R.E.'s proposal, if adopted, would be a significant step backwards in that endeavor.

Conclusion

The Commission should reject the *Petition* to the extent described above.

Dated: May 6, 1998

Respectfully submitted,

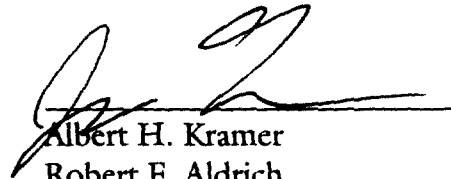
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A handwritten signature in black ink, appearing to read 'Albert H. Kramer', is written over a horizontal line.

Albert H. Kramer

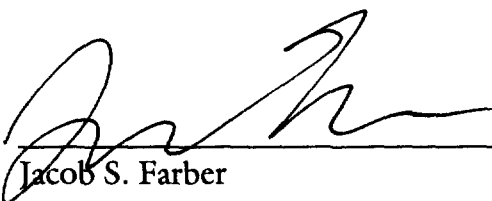
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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 1998, a copy of the foregoing Comments of the Inmate Calling Service Providers Coalition on the Petition for Reconsideration of Citizens United for Rehabilitation of Errants was delivered by hand to the following:

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